**Crim.A. 6/50**

**LEVITT**

**v.**

**ANGEL**

In the Supreme Court Sitting as a Court of Criminal Appeal
[June 30, 1950]
*Before: Dunkelblum J., Olshan J., and Cheshin J.*

*Contempt of Court - Civil and criminal contempt* - Contempt *of Court Ordinance,* 1929 s. 6(1) - *Criminal Code Ordinance,* 1936, s. 143 - *Object of civil contempt proceedings to enforce compliance with order of court and not to punish offender - Differences between English and Israel Law.*

The appellant, who had allowed third parties to occupy premises in breach of an injunction restraining him from so doing was convicted of contempt of court under the Contempt of Court Ordinance and was sentenced to a fine of I.L. 250 or three months imprisonment. This sentence was imposed on the appellant by the District Court not for the purpose of inducing him to comply with the terms of the injunction, which had become impossible, but as a punishment for its breach.

Held, allowing the appeal, that the purpose of the sanctions in the Contempt of Court Ordinance is to enforce the carrying out of an order of court and not to punish a person held in contempt, for which other legislation existed.

Palestine case referred to :

(1) *Cr. A.* 2/47*; Taasiya Chemit Tel Aviv Ltd. v. Kupat Cho*lim *shel Hahistadruth Hakialit shel Haovdim Haivrim and another;* (1947), 14 *P.L.R.* 348.

English cases referred to :

(2) *Re Clements, Costa Pica Repablic v. Erlanger;* (1877), 46, *L.J. Ch.* 375.

(3) In re *Maria Annie Davis;* (1888), 21 *Q.B.D.* 236.

(4) *Seaward v. Paterson;* (1897) 1 Ch. 545.

(5) *Scott (otherwise Morgan) and another v. Scott; (*1913*), A.C.* 417.

(6) *Wellesley v. The Duke of Beaufort;* (1831), 39 *E.R.* 538.

(7) *Re Newbery;* (1835), 111 E.R. 725.

*Miller for the appellant.*

*Metosevitch for the respondent.*

OLSHAN J. The respondent, the plaintiff in Civil Action, 839/ 49, which is pending in the District Court of Tel Aviv, obtained an injuction from that court in the following terms:

> "After having considered the petition of the said plaintiff, and after hearing the arguments of counsel, it is decided to issue an interim order prohibiting, until the conclusion of the case, the respondent, his servants or agents from delivering possession of the said room to any person or persons who are not today living in the said room, in the event of its being vacated by the respondent."

The respondent applied to the lower court to impose a fine or imprisonment upon the appellant (the defendant in the said case) under section 6(1) of the Contempt of Court Ordinance, 1929,[1)] by reason of his having disobeyed the order referred to above .

The learned judge who dealt with the application found the following facts :

At 6 a.m. on December 1, 1949, the appellant vacated the room in question and at the same time a number of people moved their furniture into the room with the appellant's permission. A few hours later, after all the persons concerned had been brought to the Police Station, some of the trespassers shouted at the appellant and demanded the return of

1) For text of s. 6(1). See infra p. 36.

"the money". The appellant had in fact handed the keys to the respondent before this, but the learned judge was satisfied that this was an act of deceit designed to cover up his breach of the injunction referred to.

It would appear that the persons referred to had vacated the room after the intervention of the police, but had returned a few hours later.

On December 16, 1949, the learned judge imposed upon the appellant : "a sentence of a fine of I.L. 250 or imprisonment for three months, on condition that after the first respondent (that is to say, the appellant in this appeal) shall have served at least one third of the imprisonment above mentioned he shall be entitled to apply to court for a reduction of the sentence, and the court will no doubt take into account his efforts to remedy the damage caused by him.

The persons who entered the room without permission were joined as parties to the above application, and an order was made against some of them directing them to vacate the room within twenty four hours. This order, however, was not directed against the appellant. He was sentenced, but no order to vacate the room was made against him, because as the learned judge pointed out in his decision, "it is possible that the appellant no longer has any direct control over those in possession of the room, and therefore it would not be proper to compel him directly to enforce the order."

These are the facts upon the basis of which this appeal against the order dated December 16, 1949 has been brought.

2. Had it still been possible for the appellant to rectify the situation and to give effect to the injunction at the time the fine was imposed upon him, and had the fine been imposed upon him in order to compel him to obey the injunction, we should have found nothing wrong in the decision of the learned judge. In this case, however. a punishment has been imposed upon the appellant for an offence committed by him without there being any danger, so far as he is concerned, of being tried a second time should he persist in his wrongful conduct. This, moreover, was done under section 6(1) of the Contempt of Court Ordinance, not

under normal criminal procedure, but under the procedure laid down in that section of the Ordinance.

An important question arises, therefore, in regard to the meaning and purpose of section 6(1) of the Contempt of Court Ordinance. The question is : does this section apply when the purpose is to punish a wrongdoer for failure to obey an order of court, or is it intended to impose a fine or imprisonment in order to compel a wrongdoer to obey such an order?

It would appear from the decision of the learned judge that he accepts the former alternative, for it is for this reason that he specifically imposed "a punishment" upon the appellant and discharged him from the responsibility of obeying the order in the future. It is for as, therefore, to determine whether this approach of the learned judge is correct.

3. It would seem that in applying section 6(1) the learned judge followed the practice of the courts in England.

English law recognises two forms of contempt of court :

(a) Criminal Contempt of Court - where the course of justice is impeded by means of disturbances, by words or acts.

(b) "Contempt of Court affecting procedure" which is usually also called Civil Contempt of Court, where orders are disobeyed, with the result that the rights of the individual are defeated.

Contempt of Court of the first class is a misdemeanour which renders the wrongdoer liable to be charged, as in the case of any other offence.

Contempt of Court of the second class - where there has been disobedience of an order of court - is a matter between the parties, and results in the invoking of sanctions against the party who committed the breach of the order, in order to compel him to obey such order. There is no element of punishment in such sanctions as there is for a criminal offence. If the

disobedience is intentional and wilful it assumes a criminal character, and is then liable to become a matter between the state and the wrongdoer. For so long as the contempt does not assume a criminal character there is no room for the imposition of a punishment, but only for the taking of steps to enforce compliance with the order. (See Halsbury, Laws of England, Second Edition, vol. 7, p. 24.)

In order to punish contempt which contains a criminal element, it is the practice of the English courts to exercise their inherent powers. Unlike the case where o wrongdoer is charged with contempt upon a charge sheet the court is entitled, when exercising its inherent powers, to impose upon a wrongdoer a punishment of a fine or imprisonment without any limitation. The wrongdoer is liable to be sent to prison for an unspecified period, except that he may apply to court from the place of his imprisonment for an order of release. The ordinary criminal procedure is no longer often employed for the trial of a wrongdoer for the misdemeanour of contempt of court. (See Halsbury, vol. 7, p. 3, note (e)). It is interesting, nevertheless, to point out that the judges do not regard the use of this inherent power favourably, when there is no compelling reason to refrain from using the ordinary criminal procedure. In re *Cletments and Costa Rica Republic v. Erlanger* (2) Jessel M.R. said :

> "This jurisdiction... being practically arbitrary and unlimited should be most jealously and carefully watched and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of Judges to see whether there is no other mode which is not open to the objection of arbitrariness."

Criticism has been leveled particularly against the imprisonment of a wrongdoer for an unspecified period for acting contrary to an order of court, when it is not within his power to remedy the damage done. See the remarks of Mathew J. in *Inre Maria Annie Devis* (3) who said : "It should be borne in mind that contempt of court is a criminal offence, punishable as a misdemeanour by fine and imprisonment or both."

There is a distinction, therefore, between the imposition of a punishment for disobedience of an order of court and the taking of steps to enforce obedience to an order.

In England this distinction is not important since in both cases the courts deal with the matter in the exercise of their inherent powers; and because in the absence of a statutory provision no question arises there as to which section, or which law, is to be applied to the different classes of contempt of court. The court in England will exercise its powers according to the circumstances of each case brought before it.

4 The question therefore arises whether, in view of section 6(1) of the Contempt of Court Ordinance, the courts of this country may act in the same manner as the English courts. May section 6(1) of the Contempt of Court Ordinance also be applied where the imposition of a five or imprisonment is required not in order to secure the carrying out of the order by the party who committed a breach of that order, but for the sole purpose of inflicting a punishment? In say opinion the answer to this question is in the negative. The reasons which have led me to this conclusion are as follows :

(a) Section 6(1) does not speak of a fine or imprisonment as of a punishment which is imposed for a criminal offence, but as a means of compelling one of the parties to obey an order of court - that is to say, "to compel him until he says that he is willing."

(b) Section 8 of the Contempt of Court Ordinance does not simply lay down that there is a right of appeal from a sentence imposed under section 6(1), but provides a right of appeal "on the same conditions as an appeal from a criminal judgment". In other words, it is only for the purposes of appeal that a decision under section 6(1) imposing a fine or imprisonment is similar to a criminal judgment. The word "penalty" in section 8 does not alter the position. That word refers to a decision imposing **a** fine or imprisonment in order to enforce obedience to an order, and affords no proof that section 6(1) refers to a punishment which is imposed for a criminal offence. In the same way, for example, the legislature used the same word "penalty" in the Stamp Duty Ordinance in imposing a fine on a person who has not impressed the amount of adhesive stamps as required by law, despite the fact that an act such as this is not included in section 81 of the Ordinance, which lists the criminal offences committed in regard to the provisions of the Stamp Laws. Moreover, in section 5 of the original Contempt of Court Ordinance of 1924,

which conferred a right of appeal from the decisions of the courts under other sections of the same Ordinance as well, the distinction between section 4 (section 6(1) of the 1929 Ordinance) and the remaining section was intentionally emphasized.

In regard to decisions under the remaining sections the Ordinance speaks of "an appeal... from a conviction and sentence...", whereas in regard to decisions under section 4 it provides "an appeal from a judgment...".

(c) It would appear from the Contempt of Court Ordinance that the legislature did not intend to leave the maximum punishment which may be imposed upon an offender to the discretion of the judge. In section 3 a maximum punishment of a fine of I.L. 5 or imprisonment for one month is laid down; in section 4 a fine of I.L. 100 or imprisonment for one year or both these punishments is provided for; in section 5, imprisonment for one month. In section 6(1), however, no maximum has been laid down. It follows, therefore, that the legislature did not intend this section to be the basis of a punishment for a criminal act.

(d) The legislature knew of the Contempt of Court Ordinance when it enacted the Criminal Code Ordinance in 1936. It may be assumed, therefore, that had the "imposition of a punishment" for disobedience for an order of court been included in section 6(1) of the Contempt of Court Ordinance, the legislature would not have enacted section 143 of the Criminal Code Ordinance in terms of which every person who disobeys an order of court is guilty of a misdemeanour and is liable to imprisonment for two years.

(e) In terms of section 143 of the Criminal Code Ordinance disobedience of any order of court is made an offence as is also disobedience of an order given "by any officer or person acting in any public capacity and duly authorised in that behalf", and for this offence a punishment of imprisonment for a period not exceeding two years is provided. This section contains two provisos, namely : "unless (a) any other penalty is expressly prescribed or (b) any other mode of proceedings is expressly prescribed in respect of such disobedience". It is possible that these

provisos also give some hint as to the meaning of section 6(1) of the Contempt of Court Ordinance. It seems to me that the first proviso cannot refer to section 6(1) since that section contains no express provision relating to the imposition of a punishment and it is difficult to regard the giving of power to the court to enforce obedience to its orders as "the express provision of another penalty". The second proviso may apply to section 6(1). This proviso does not speak of "any other mode of imposing a penalty in respect of such disobedience", but it speaks of "any other mode of proceeding in respect of such disobedience". "Any other mode" - that is to say, another way of dealing with the act which constitutes this disobedience - in other words, in place of the imposition of a penalty for disobedience to the order of court, there is a proceeding for enforcing obedience to such order.

(f) Finally, the original section 6(1) does not speak of courts in general but of particular courts. The Contempt of Court Ordinance in its present form was enacted in 1929. The law in force at that time was the Ottoman Criminal Code which contained no section whatsoever in terms of which disobedience to an order of court could be punished. Is it possible that the legislature intended in section 6(1) to confer upon particular courts alone the power of imposing a punishment for disobedience of their orders? It is true that the power of granting injunctions had not yet been conferred upon magistrates but they were able to issue other orders. Is it possible that the public interest did not also demand the imposition of a penalty for failure to obey the order of a magistrate? It follows that section 6(1) was designed to enforce obedience to an order and not to impose a penalty for an offence. It was only in 1936, in section 143 of the Criminal Code Ordinance, that a penalty was provided for disobedience of an order given by any court. Since magistrates had no power to grant injunctions no importance was attached to the enforcement of their orders. Proof of this is to be found in the fact that in 1947, when the power was conferred upon magistrates of granting injunctions (see Ordinance 45 of 1947) section 6(1) was also amended so as to include magistrates courts. (See Contempt of Court (Amendment) Ordinance, 1947).

5. *In Taasiya Chemit Tel Aviv Ltd*., *v. Kupat Cholim,* (1), in which a fine of I.L. 5000 was imposed, the argument was advanced upon the basis of section 41 of the Criminal Code that since no maximum fine was laid down in section 6(1) of the Contempt of Court Ordinance, the maximum was I.L. 200. The court said :

> "Section 6 of the Contempt of Court Ordinance was enacted for the purpose of enforcing by fine obedience to an order issued. The object of the section is not as is contemplated by section 41 of the Criminal Code Ordinance, but to give authority to impose a fine which would be sufficient to enforce obedience."

6. It appears to me from the decision of the learned judge in the case before us that he issued the order against those who entered the room without permission in order to secure obedience to the injunction, while he imposed upon the appellant a punishment as for a criminal offence. It seems to me that the direction that should the appellant elect to be imprisoned he may, alter having completed a third of the sentence, apply to the court for a reduction of the sentence and the court would take into consideration the efforts of the appellant to remedy the damage which he had caused, was only intended to induce the appellant to make it easier for the trespassers - who were obliged to carry out the order - by returning them their money if, in fact, he had received money from them.

The learned judge himself says in paragraph 6 of his decision that "the purpose (of the remedy sought - the imposition of a fine or imprisonment) is not to punish but to enforce obedience to a particular order given by a civil court by means of the imposition of a penalty", while in paragraph 11 he says : "in the face of open and impudent contempt such as this, there is no alternative but to impose a suitable punishment upon the first respondent."

It is possible that reliance may be placed upon section 143 of the Criminal Code Ordinance in order to punish the appellant for disobeying an order of court, but the use of section 6(1) of the Contempt of Court Ordinance and the procedure laid down for that purpose is not in accordance with law.

In my opinion the decision of the learned judge of December 16, 1949, in regard to the appellant must be set aside.

DUNKELBLUM J. I concur, with some hesitation, in the conclusion reached by my colleague, Olshan J., and wish to add a number of comments of my own.

The problem before us is the interpretation of section 6(1) of the Contempt of Court Ordinance. The question is whether this section also applies to a case where the accused has acted contrary to an order of court but is no longer able to remedy the situation. In other words, is the section only intended to compel a person to comply with a judgment by imposing a fine or imprisonment and that such means of compulsion may not be employed if the act committed by the accused is no longer capable of being corrected by him, or does the section also include an element of punishment to be imposed upon a person who disobeys an order of court although he can no longer remedy the position, the object being to warn others.

The distinction between criminal contempt of court and contempt which is only disobedience of an order given by the court in civil proceedings has been known to English law for some time. ln speaking of the second type of contempt *of court proceedings, it is pointed out by Lord Lindley, in the case of Seaward v. Paterson* (4), that "the party who is bound by the injunction is proceeded against for the purpose of enforcing the order of the court for the benefit of the person who got it... The person who is interested in enforcing the order enforces it for his own benefit." In cases falling into the first class the court is concerned not to permit a person to treat it with contempt.

Lord Atkinson defined more clearly the nature of the first class of contempt, that is to say, civil contempt of court, in the case of *Scott v. Scott* (5). At page 456 Lord Atkinson, after referring to various judgments relied upon by counsel for the parties, said :

> "It was contended that these cases show that the disobedience of an order of court constitutes in itself a crime, a criminal contempt of court. Unfortunately for this contention, however, they do something more than that; they show I think, conclusively, that if a person be expressly

> enjoined by injunction, a most solemn and authoritative form of order, from doing a particular thing, and he deliberately, in breach of that injunction, does that thing, he is not guilty of any crime whatever, but only of a civil contempt of court."

Acts which constitute the first class of contempt are of an entirely different character, such as an attempt to influence witnesses, to threaten witnesses, interference in the work of the court which disturbs the proceedings, acts of disturbance generally, shouting and demonstrations in court, and acts of a similar nature. (See for example the judgment of Lord Shaw in *Scott v. Scott* (5), and also the judgment of Lord Atkinson at p. 455.)

It is possible therefore to distinguish shortly between these two classes of contempt, and to say that to the first class belong acts which are of such a nature as to disturb the work of the court or which are liable to influence the proceedings in court, while acts which do not possess these characteristics but consist in disobedience of an order given in favour of a litigant in a civil proceeding, belong to the second class.

The Palestine legislature found it proper to regulate the question of contempt of court by legislation. The opening sections - that is to say sections 3, 4, and 5 - deal with acts which belong to the first class, while section 6 of the Ordinance speaks only of disobedience of an order which is to be executed in favour of the interested party. It is true - as is said in a number of English judgments - that there is also a criminal element ill the imposition of a penalty for disobedience of an order in a civil proceeding (see for example the judgment of Rigby J. in the case of *Seaward* v. *Paterson* (4) at p. 558; and see Halsbury, vol. 7 p. 24). As far, however, as the question before us is concerned, we are obliged to rely, in the main, upon the provisions of section 6(1) of our Ordinance, and the correct interpretation to be given to the expressions employed by the legislature. The section provides as follows :

> "6(1) The Supreme Court, the Court of Criminal Assize, a special Tribunal constituted under article 55 of the Palestine Order in Council, 1922, the District Court and the Land Court shall have power to enforce by fine or imprisonment obedience to any order issued by them directing any act to be done or prohibiting the doing of any act."

The object of this section, therefore, is to impose a fine upon a person or to direct his imprisonment for the purpose of compelling him to carry out an order of court, and if that person did an act which he cannot remedy, then according to the interpretation of the section he is not to be imprisoned or fined since the court will not compel him to do something which he is unable to do. It is possible that the result of this interpretation is not altogether satisfactory. The provision before as is one dealing with imprisonment and fines, and a provision such as this must be interpreted strictly and not broadly.

No local or English authority dealing directly with a question similar to that before as was cited to as by the parties, and I too have been unable to find any such authority. I merely wish to point out that a submission similar to that made to us was argued more that a hundred years ago in the case of We*llesley v*. the *Duke of Beaufort* (6). The argument in that case, however and I think correctly so - was presented in the opposite form, that is to say, that where a person does an act contrary to an order of court which he cannot remedy, the punishment imposed upon him should be more severe. In the case of *Re Newberg* (7), the accused was sentenced for contempt of court although the order which he failed to obey was a civil order, and although it was not possible for him to carry out the order previously given at the time he was punished. Counsel for the accused in that case presented a submission similar to that make before us. The punishment is imposed, so he argued, so as to procure the doing of an act speedily which someone is obliged co do by law. The accused was in the meantime declared a bankrupt and was therefore unable to do what he had been ordered to do. Judgment was given against the accused on other grounds : he was a lawyer, and his actions amounted to deceit. The judgment in that case, therefore, cannot be regarded as a precedent in our case. It is merely interesting that in the course of argument Lord Denman C.J. asked in wonderment whether it was desired to argue that the accused could not fulfil the requirements imposed upon him when such action on his part was demanded of him because he had, by his own actions, put it out of his power to perform those requirements? In the case of *In re Davis* (3), it was mentioned by the court, obiter, that a person is punished for contempt of court for failure to obey an order of court although the act which constitutes the offence is not capable of being remedied. In any event, us I have said, although this question has arisen many times, I have found no decision

bearing directly upon it. It seems, however, that this argument would not be sufficient to secure the acquittal of the accused under English practice.

We are dealing with a statute which, although based upon the practice followed in England for generations, must be interpreted primarily according to the literal meaning of the language. It seems to me, therefore, that we must conclude from the language of section 6(1) that the provisions of this section do not apply to the case before us. It seems to me that it is necessary to amend this section in such as way as to make it clear that a person who disobeys an order of court made at the conclusion of civil proceedings will be punished upon the application of the interested party in whose favour the order was given without resort to section 143 of the Criminal Code Ordinance, 1936.

It is also desirable to mention here that, according to English law, if a person undertakes in court to do or refrain from doing a particular act and the court, relying upon such an undertaking, confirms particular actions, breach of such an undertaking constitutes contempt of court. There is no similar situation in our law, and it would be desirable to remedy the omission.

I have doubts in regard to what was said by my colleague Olshan J., as to the scope of section 143 of the Criminal Code Ordinance. It is not clear to me whether a person who commits a breach of an order of prohibition issued by a civil court is guilty of a criminal act under that section. In the case mentioned above, *Scott v. Scott* (5), Lord Shaw said (at p. 486) :

> "...the breach by a party of an order made against him or her in the course of a civil case is a perfectly familiar thing. Cases for breach of injunction are tried every day. But I have never yet heard that they were anything but subject to trial by the civil judges as in a civil cause or matter."

It is not necessary however to deal with this question now.

It is my opinion, therefore, that the appeal should be allowed, and the judgment of the court below set aside.

CHESHIN J. I concur in the opinion of my learned colleagues that the order (mistakenly called "the decision") of the District Court imposing a fine upon the appellant should be set aside.

2. The sections in the Contempt of Court Ordinance dealing with the imposition of a fine or imprisonment are divided according to their nature into two groups. The first group - which includes sections 3, 4, 5, and 10 (which was repealed by the Criminal Code Ordinance, 1936) - refer to the past, while the second group - which includes only section 6 - refers to the future. Each of the sections in the first group opens with an act done by a person, and concludes with the fine or imprisonment which is to be imposed upon that person for the act committed by him. The language of the sections themselves is as follows :

> "Section 3(1): "If any person wilfully obstructs... an officer of a court in the performance of his duty... is liable to be punished with a fine... or with imprisonment..."
>
> Section 4(1): "If, while any proceedings... are pending in any court, any person shall publish any writing... the High Court... may summon such person... to show cause why he should not be punished... by fine or imprisonment... "
>
> Section 5: "A witness who refuses to be examined according to lax... may be committed to prison by the court summarily... ".
>
> Section 10(1): "Any person who -
> (a) ...uses words...
> (b) publishes any invective... is liable to imprisonment...".

The position therefore is that the Ordinance in these sections defines acts, and lays down penalties in respect of these acts. Then, standing alone, is section 6 - in the second

group - which does not speak at all of acts but opens with a fine or imprisonment, and explains at once that the fine or imprisonment is not in respect of some act which was done or some omission, but that the purpose of the fine or imprisonment is to enforce obedience in the future to an order given by the court in the past. In this respect section 6 is irregular in the framework of the Contempt of Court Ordinance, and its object is utilitarian, for the purposes of a specific matter and not general and punitive. As against this section 143 of the Criminal Code Ordinance 1936 - which complements section 6 of the Contempt of Court Ordinance - should really, from the point of view of its content, be part of this latter Ordinance, for this section - 143 - also opens with an act : "every person who disobeys any order or warrant given by any Court..." and closes with a punishment "is liable ...to imprisonment."

3. The learned judge in the District Court did not observe this distinction, and after relating the facts regarding the breach committed by the appellant, he adds : "in the face of open and impertinent contempt such as this there is no remedy but to impose a suitable punishment upon the first respondent (the appellant in the proceedings before us)". The learned judge, however, overlooked that section 6 does not provide a punishment for breach of the order, but empowers the court to impose a fine or imprisonment for the purpose of enforcing obedience to the order in the future. From this it follows that where it is clear that the order cannot be complied with in any event because there is no possibility of complying with it, section 6 does not apply at all since there would be no effect in such n case in imposing a fine or imprisonment. Let us assume, for example, that the court ordered a person to do a particular act, and that having failed to obey the order the person concerned was summoned to court to show cause why a fine or imprisonment should not be imposed upon him under section 6(1) of the Contempt of Court Ordinance. And let us assume further that during the period between the filing of the application and the date of the hearing he complied with the order and did what was required of him. Would the court be competent to impose upon him a five or imprisonment? It is clear that the answer is "no". In terms of section 6(1) a fine or imprisonment is imposed only "to enforce obedience to any order issued" by the court, but in the example which I have cited the order had already been complied with - albeit after some delay. From this point of view, a person who appears before the court and proves that he cannot comply with the order is in the same position as a person who complied with the order but did so after the date fixed for the compliance. In neither case will the imposition

of a fine or imprisonment enforce compliance with the order - in the first case because it has already been complied with, and in the second case because there is no possibility of its being complied with.

4. And this is not all. The fines and periods of imprisonment mentioned in those sections which fall into the first group are the fines to be exacted for acts that have been committed. Such acts are onetime acts and the fine is to be paid but once. From this it follows that the act is a criminal offence, and the fine or imprisonment is punishment. As against this, the fine and imprisonment in section 6(1) are not intended as a fine to be exacted for an act which has been committed, but are a means of enforcing - by way of warning - the performance of an act. If one attempt to enforce compliance with the order has no effect, then he who disobeys must be compelled a second time, and a third time, and so on without end, until he does what is required of him. From this it follows that disobedience is not a criminal offence, and the fine or imprisonment is not a punishment. The learned judge therefore erred in his opinion that there is no alternative but to impose a suitable punishment upon the first respondent.

5. I must confess, in conclusion, that I thought at first that it would perhaps be wise, after setting aside the order of the District Court, to return the case to that court to determine whether indeed the appellant is able to comply with the order of the court. It is difficult to ascertain from the facts what the position is, and the order of the learned judge is also not sufficiently clear. At one point in the order - after speaking of imposing a punishment - the learned judge says that "after the first respondent (the appellant) shall have served at least one third of the imprisonment... he shall be given the opportunity of applying to court for a reduction of the sentence, and the court will no doubt take into account his efforts to remedy the damage caused by him". This language suggests the possibility that the appellant will be able, with some effort, to comply with the order. But next to the sentence which I have quoted we find the following words : "It is possible that the appellant no longer has any direct control over those in possession of the room, and there is no necessity for this reason to compel him directly to enforce the order". It will be seen that these words indicate two possibilities. I thought, therefore, as I said, that it would perhaps be desirable to direct the court below to determine the position as it is and decide accordingly. I changed my mind, however, after considering the application of the respondent to the court below. It is

true that this application is headed by the words "Application under Section 6(1) of the Contempt of Court Ordinance", but in the body of the petition the court is asked "to give an order for the imposition of a fine or imprisonment for failure to comply with the order given in Application . . . ". In other words, it is not compliance with the order in the future which concerns the respondent, but the failure to comply with the order in the past. The prayer in the petition, therefore, is for the imposition of a punishment for an offence. It is here that the mistake of the petitioner lies - a mistake which in the end led the court itself into error. The petition is based upon false premises, and should have been dismissed by the court at the beginning of the proceedings when counsel for the appellant addressed his preliminary arguments to the court. For this reason there is also no point in returning the case to the District Court.

*Appeal allowed and the decision of the lower court, in so far as it affects the appellant, set aside. Judgment given on June* 30, 1950.